

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC., d/b/a
LIBERTY TAX SERVICE,
Plaintiff,

VS.

NO. 2:11cv59

TROY CLARK and
SOUTHWEST TAX STORES, LLC
Defendants.

DEPOSITION OF TROY CLARK

Volume 1

May 23, 2011

9:29 a.m.

500 Fourth St. NW, Suite 105

Albuquerque, New Mexico 87102

PURSUANT TO THE FEDERAL RULES OF CIVIL
PROCEDURE, this deposition was:

TAKEN BY: Ms. Sada L. Sheldon
ATTORNEY FOR PLAINTIFF

REPORTED BY: Jeannine K. Sims, RPR, NM CCR #12
Paul Baca Court Reporters
500 Fourth Street NW, Suite 105
Albuquerque, New Mexico 87102

Blumberg No. 5208

EXHIBIT

1

1 Q. What was your degree in?

2 A. Accounting.

3 Q. What year did you graduate?

4 A. Graduated with both a bachelor's and
5 master's in 1995.

6 Q. Was your master's and bachelor's in
7 accounting?

8 A. Yes.

9 Q. Do you have any other degrees?

10 A. No.

11 Q. That's plenty. Do you have any other
12 certifications?

13 A. Certified public accountant in inactive
14 status.

15 Q. Okay. So in the last ten years what types
16 of employment have you had? You can --

17 A. Takes us back to 2000. In 2000 I was
18 employed by Medisphere Health Partners, a healthcare
19 company based in Nashville, Tennessee. While with
20 Medisphere -- this may extend a little prior to ten
21 years, but I was a director of acquisition -- mergers and
22 acquisition, I was a vice president of operations, and
23 vice president of operations for the facilities division.

24 Q. That was all with Medisphere?

25 A. That's all with Medisphere. In 2004 --

1 Q. Was that the only job you had at that
2 time?

3 A. With Medisphere?

4 Q. In 2000?

5 A. Yeah. 2000 that extended through 2004
6 Medisphere was sold, I did independent consulting for
7 approximately six months with hospitals.

8 Q. Was Medisphere -- they're headquartered in
9 Nashville but --

10 A. That's correct.

11 Q. -- where did you actually work?

12 A. I was based out of Nashville, but I had
13 responsibilities across the country. I was vice
14 president for operations. We had operations in Redding,
15 California; Oklahoma City; Fayetteville, Arkansas;
16 Cincinnati, Ohio; Dallas, Texas. Actually it was
17 Duncanville, Texas; Tyler, Texas; Miami, Florida;
18 Louisville, Kentucky; Lexington, Kentucky; Knoxville,
19 Tennessee; Memphis, Tennessee; Birmingham, Alabama;
20 Jackson, Mississippi. I think I've covered them all.

21 Q. And where did you live at that time?

22 A. I lived in Nashville, Tennessee.

23 Q. In Nashville, Tennessee. Okay. In 2004 you
24 became an independent consultant?

25 A. 2004 I did independent consulting for some

1 of the hospitals that I had worked with as Medisphere as
2 they transitioned to the new company and then --

3 Q. Were you also in Nashville at that --

4 A. Still in Nashville.

5 Q. Still in Nashville.

6 A. And in I believe May, sometime late spring,
7 early summer I took employment with Ardent Hospital
8 Services who was based out of Nashville, Tennessee, but I
9 took responsibility for a hospital project in
10 Albuquerque, New Mexico.

11 Q. Okay.

12 A. Then in late 2005 I began a healthcare
13 consulting company originally titled TSR Health and later
14 with a name change to Plaza Health Partners.

15 Q. Is that a company that you owned, TSR
16 Health?

17 A. That's a company that I have a 33 percent
18 ownership position. Or let me clarify that. I own a
19 company by the name of TSC Inc., TSC 1 Inc., which I own
20 a hundred percent of. TSC 1 Inc. owns 33 percent of
21 Plaza Health Partners.

22 Q. Why the name change?

23 A. Process of business. Nothing -- no
24 monumental event.

25 Q. It was better marketing name?

1 A. The original name was the initials of the
2 three founders so we went to a more --

3 Q. Generic --

4 A. Calming business name. Then in January of
5 2010 -- I'm sorry, 2011 I accepted a full-time position
6 with the University of New Mexico Medical Group to be the
7 chief financial officer and vice president of financial
8 services for a hospital under construction by the name of
9 Sandoval Regional Medical Center.

10 Q. That's where you work now?

11 A. That's where I work.

12 Q. So what does Plaza Health do?

13 A. Plaza Health did healthcare consulting for
14 hospitals, surgery centers, physician offices, and also
15 financial institutions that were investing in healthcare
16 funding. -- healthcare lending. I'm sorry.

17 Q. And is this company still active?

18 A. It has not been closed down but there's no
19 active business.

20 Q. Have you owned any or been involved in any
21 other business over the last ten years?

22 A. TSC, Inc., owned a 20 percent interest in
23 Southwest Tax Store in 2005 and then I believe it was the
24 fall of 2007 TSC Inc., acquired the remaining 80 percent
25 and owned a hundred percent of Southwest Tax Stores.

1 Q. Sorry. What year was that again?

2 A. 2007.

3 Q. So who owned --

4 A. I believe it was September.

5 Q. Who owned the other 80 percent of Southwest
6 Tax prior to that?

7 A. There were four other partners. Scott
8 Vincent, Brian Vaughan, Richard Fontg, F-O-N-T-G. I
9 can't think of who I named. Did I name Tim Parker? Tim
10 Parker would be the other one. Each of 20 percent.

11 Q. Okay. So what are your current
12 responsibilities at Sandover Regional Medical Center?

13 A. Sandoval Regional --

14 Q. Sandoval.

15 A. -- Medical Center. I'm in charge of all
16 financial activities, all financial related activities
17 and we are under construction so I also work with the
18 contractor to get the -- oversee and make certain that
19 the facility is getting constructed but also establishing
20 all the infrastructure and staffing over the next 12
21 months, 13 months I guess until we open.

22 Q. Do you have employees that work under you?

23 A. Currently have one that's started and one
24 that's been offered employment but has not yet started.

25 Q. And what's your salary at this job?

1 to the Liberty brand specifically?

2 A. No. He was already a franchisee.

3 Q. And how many franchises did you purchase at
4 that time?

5 A. Let me clarify. Mr. Parker owned and
6 operated one franchise and had territory rights to either
7 two or three, I believe. He had -- he had I believe he
8 had franchise rights to three others that he had not
9 opened. It may have been two.

10 Q. So at the time --

11 A. Liberty's records could clarify that though.

12 Q. So at the time you took over you only
13 remember there being one territory --

14 A. There's only one operational territory.

15 Q. -- operating?

16 A. And we didn't take over as much as we
17 partnered with him. He still remained to be a partner.

18 Q. The four of you. Was it all four of you at
19 that time?

20 A. Five.

21 Q. At that time there was five?

22 A. There was five. There was Tim Parker, Brian
23 Vaughan, Scott Vincent, Ricardo Fontg and myself.

24 Q. Okay. And then you opened up the other
25 three territories later?

1 A. We did open the other three territories
2 later and acquired two other territories.

3 Q. And why did you acquire the other two
4 territories?

5 A. In the process of our buying into the --
6 into the franchisee, partnering up with Tim we also
7 purchased the area developer agreement for the state of
8 New Mexico, one of the franchisees had one open store,
9 one unopened territory, and she was not paying her
10 royalties so we bought her out.

11 Q. And what was your reasons for doing that?

12 A. As the area developer with her not paying
13 her franchise fees we were not collecting any of the
14 royalties that we were due, so we acquired her store so
15 we could capture those.

16 Q. Why did you purchase an AD territory?

17 A. As we discussed the acquisition with
18 Mr. Parker the opportunity came up given the number of
19 partners that we had, we felt that with the number of
20 territories he had unopened that we could leverage off
21 that and sell other territories to other franchisees and
22 therefore reduce our royalties on a net basis as the area
23 developers received half the royalties that were paid.

24 Q. Okay. Did you attend EOT training in
25 Virginia?

1 A. I eventually did, yes.

2 Q. Are you aware if any of the other four
3 partners attended EOT?

4 A. Mr. Parker I assume did. I don't have
5 knowledge, but I assume that he did prior to his
6 acquisition of the initial territories.

7 Q. What about the other --

8 A. The other three did not to my knowledge.

9 Q. What were their role in the Liberty Tax
10 franchises?

11 A. The initial roles that we had were for
12 Mr. Vaughan to operate the stores locally, he was someone
13 that Mr. Parker brought to the partnership. The other
14 three of us had our healthcare business we started off as
15 silent partners with the role to focus on the area
16 developer franchise sales. So that will be Mr. Vincent,
17 Mr. Fontg and myself.

18 Q. Okay. Approximately how many employees did
19 you have in Southwest Tax in 2010? Now --

20 A. 2010.

21 Q. I'm sorry, I'm just going to ask a question.
22 Did Southwest Tax own other companies other than the
23 Liberty franchises?

24 A. No.

25 Q. Okay. So Southwest Tax was the Liberty

1 that name to you?

2 A. As the area developer for me to follow up on
3 as a potential lead for a franchise sale.

4 Q. Okay. And what happened? What was the
5 result of that meeting?

6 A. I met with Ms. Gutierrez and discussed the
7 opportunities and obligations of a franchisee with
8 Liberty Tax and also discussed if that was not an option
9 she wanted to take immediately that we could work on a
10 arrangement where she could come to work for me in my
11 offices to get to know the Liberty system.

12 Q. So then what happened next?

13 A. She determined that she did not want to
14 purchase a franchisee but was willing to come work for
15 Southwest Tax Stores and grow in the business.

16 Q. So she came to work for you for Southwest
17 Tax?

18 A. For Southwest Tax Stores.

19 Q. For Southwest Tax. And do you remember what
20 year that was?

21 A. I believe it was 2006.

22 Q. And what did you hire her to do?

23 A. She came on as director of marketing to
24 increase the returned account at our various offices.

25 Q. What office did she work in?

1 "information would have to be requested from Freedom
2 Tax." Are you -- are you listed as a signatory on any
3 account for Freedom Tax?

4 A. Yes.

5 Q. What accounts are those?

6 A. It's a Freedom Tax. She uses her operating
7 account. I don't have the account number.

8 Q. How many accounts for Freedom Tax are you a
9 signatory on?

10 A. Just the whatever she's calling her
11 operating account.

12 Q. And why are you a signatory on that account?

13 A. Part of the conditions and requirements of
14 the sales agreement.

15 Q. Okay. When did you first meet Kim
16 Gutierrez?

17 A. The best of my recollection it was in 2006
18 or 2007. I don't recall with specificity.

19 Q. And where did you meet her?

20 A. Here in Albuquerque.

21 Q. And what was the events surrounding that
22 meeting?

23 A. Liberty Tax had forwarded her name as a
24 potential franchisee.

25 Q. And what was the purpose behind forwarding

1 Q. Did she have any other credentials or
2 experiences that attracted you to hire her?

3 A. Her success in her career in the income tax
4 business was the main driver.

5 Q. Okay. Did Ms. Gutierrez have access to the
6 Liberty franchise operations manual?

7 A. During the term of her employment, yes.

8 Q. Did she have access to the paper customer
9 tax return files during the term of her employment?

10 A. Yes. They were all in the stores.

11 Q. What about electronic customer tax return
12 information?

13 MR. GAYNOR: I'm going to object. What
14 about it?

15 Q. (BY MS. SHELDON) Did she have access to it
16 during the term of her employment?

17 MR. GAYNOR: Thank you.

18 A. Yes.

19 Q. (BY MS. SHELDON) Did Ms. Gutierrez sign an
20 employment agreement during any time that she worked for
21 you?

22 A. No.

23 Q. What was your reason for not having her sign
24 an employment agreement?

25 A. Southwest Tax Stores did not utilize the

1 employment agreements.

2 Q. What was your reason for not doing that? Do
3 you know Southwest Tax's reasons for not doing that?

4 A. As an ownership group we knew that the
5 noncompete provisions in the employment agreements were
6 unenforceable and also were a barrier to gaining
7 employees. So we did not utilize them.

8 Q. And Mr. Clark, Ron Clark is your father,
9 correct?

10 A. That is correct.

11 Q. And when did you hire Ron Clark? I keep on
12 wanting to say Mr. Clark but that would be confusing.
13 When did you hire Ron Clark to work in your Southwest
14 Tax?

15 A. I believe we brought Ron in in 2005.

16 Q. And what did you hire him to do?

17 A. We hired him as a general manager to oversee
18 what I would call the non-technical operations of the
19 stores.

20 Q. Can you explain what you mean by --

21 A. He was not a tax preparer. So he oversaw
22 staffing, scheduling, hiring, waiving. I think actually
23 I believe we brought him on in 2006. I apologize. I
24 believe we brought him on in 2006.

25 Q. And what office did he work in?

1 advice.

2 MS. SHELDON: I appreciate --

3 MR. GAYNOR: The actual objection for the
4 record is that I think it assumes facts not previously
5 established on the record.

6 MS. SHELDON: Okay..

7 Q. (BY MS. SHELDON) Mr. Clark, is this an
8 agreement that you sent to Liberty Tax an agreement
9 between Southwest Tax and Freedom Tax?

10 A. This was a signed term sheet that yes, I did
11 forward on to JTH, Inc.

12 Q. Okay. And had you and Ms. Gutierrez made an
13 agreement between Southwest Tax and Freedom Tax?

14 A. This would be the term sheet that delineated
15 the discussions we'd had over the transaction at that
16 time.

17 Q. And what became of this agreement?

18 A. Nothing.

19 Q. And why did nothing become of this
20 agreement?

21 A. JTH Tax or their representative of Liberty
22 Tax clarified a point that my attorneys had missed in the
23 franchise agreement; that it had included the inclusion
24 of an asset being a customer list which was not allowed
25 per the franchise agreement. And in the rediscussions of

1 Suite G.

2 Q. Okay.

3 A. That was not an office that I leased.

4 Q. All right. I'd like to show you Clark

5 Exhibit 5.

6 (Marked Clark Exhibit No. 5.)

7 Q. (BY MS. SHELDON) This is a lease agreement
8 that was produced to me by Freedom Tax. Lease agreement
9 was made and entered on the first day of September 2009
10 between Laramie Square Partners and Freedom Tax. On the
11 very last page is a signature page that has you listed as
12 the tenant. Is that your signature?

13 MR. GAYNOR: Hold on. Just to clarify. For
14 the record we're looking at a non-sequentially numbered
15 document that contains approximately I believe it's ten
16 pages. The first page at the very top says "San Mateo
17 Lease Agreement," been marked as Clark Exhibit 5. And
18 just for the record we don't have a four, do we?

19 MS. SHELDON: 4 is going to be the purchase
20 and sale agreement.

21 MR. GAYNOR: All right. That's fine. That
22 being said, I didn't mean to interrupt your flow there, I
23 just wanted to make sure the record was clear as to what
24 we're looking at.

25 Q. (BY MS. SHELDON) Have you seen this

1 document before, Mr. Clark?

2 A. Yes.

3 Q. Okay. Does this document appear to be in
4 its entirety?

5 A. To the best of my knowledge.

6 Q. Okay. And is that your signature on the
7 last page --

8 A. Yes.

9 Q. -- as tenant? And do you recall why you
10 entered into this lease?

11 A. There was a renewal of the space that we had
12 the office on San Mateo.

13 Q. Why would you have entered into the lease as
14 Freedom Tax?

15 A. This lease came up for renewal during the
16 time that we were initially contemplating a sale between
17 myself and Ms. Gutierrez. We asked the landlord to
18 change the name to Freedom Tax. And subsequently on the
19 signature of this as I believe it was retroactive, we
20 signed on October 1st. The retroactive date we had asked
21 them to make the change assuming that the Freedom Tax
22 would have been completed, the transaction, it was not.
23 Ended up not being completed all during that year. The
24 landlord had made the agreement, we did not go back and
25 ask them to switch it back and I made the signature of

1 the lease.

2 Q. Okay. And when is the last time Southwest
3 Tax paid rent on this office?

4 A. The last time Southwest Tax Stores paid rent
5 on this office space would have been December of 2010.

6 Q. And have you -- sorry. Did you ever go back
7 and have this lease agreement changed for Southwest Tax
8 after the deal didn't go through?

9 A. We did not.

10 Q. And why not?

11 A. I guess it was oversight on my part. Like I
12 should not have signed it on behalf of Freedom Tax.

13 Q. Okay. So as far as you know, I just want to
14 clarify, this agreement is still between Laramie -- has
15 this agreement been assigned or changed in any way?

16 MR. GAYNOR: Just for the record are you
17 referring to Exhibit 5?

18 MS. SHELDON: Exhibit 5.

19 MR. GAYNOR: Thank you.

20 Q. (BY MS. SHELDON) The lease agreement for
21 3118 San Mateo.

22 A. Not to my knowledge.

23 Q. Okay. Now I'm going to show you Clark
24 Exhibit 6.

25 (Marked Clark Exhibit No. 6.)

1 Q. (BY MS. SHELDON) This lease was produced to
2 me by Freedom Tax. The first page is a Renewal of
3 Commercial Lease between Southwest Tax and Eubank Plaza
4 West Investors for an additional three-year term. Signed
5 on December 10th, 2010. That's the first page; is that
6 correct? A renewal of commercial lease for three years
7 between Southwest Tax and Eubank Plaza West Investors?

8 A. I apologize, we were glancing through when
9 you started the question. Would you please restate the
10 question so I hear it in its entirety.

11 Q. Sure. I'm just looking at the first page of
12 Exhibit 6. At the top it say it's a renewal of a
13 commercial lease between Southwest Tax and Eubank Plaza
14 West Investors for an additional three-year term dated
15 December 10th, 2010; is that correct?

16 A. That is correct.

17 Q. And the second page is an Assignment of
18 Commercial Lease and Guarantee between Southwest Tax,
19 looks like you're assigning your interest with Eubank
20 Plaza West Investors to Freedom Tax; is that correct?

21 A. That is correct.

22 Q. But that you Troy Clark agree to remain as a
23 personal guarantor for the payment and performance of the
24 lease through April 30th, 2012; is that correct?

25 A. That is correct.

1 Q. And why were you the guarantor for this
2 location?

3 A. As stated earlier, she came to me to discuss
4 needing a guarantor to enter into this lease so that she
5 could operate business in that location.

6 Q. And you believe that you saw the Exhibit E
7 guarantee without looking at the rest of the lease?

8 A. I cannot recall if I saw the remainder of
9 the lease. I do recall seeing Exhibit E the guarantee.

10 Q. One more exhibit.

11 (Marked Clark Exhibit No. 9.)

12 Q. (BY MS. SHELDON) Exhibit 9, Clark
13 Exhibit 9.

14 MR. GAYNOR: To 8, I don't have any
15 objections to that being entered.

16 Q. (BY MS. SHELDON) Okay. We have Clark
17 Exhibit 9. See the first page is titled Sublease
18 Agreement with Master Landlord's Consent. This is a
19 sublease agreement, 1st day of July, 2008 between Mia
20 Huynh and American Home Realty. Do you know who Mia
21 Huynh is?

22 A. Yes.

23 Q. Who is she?

24 A. She is the owner and operator of American
25 Home Realty, LLC.

1 Q. Okay. And Troy Clark.

2 A. Yes, I know who he is.

3 Q. Southwest Tax. Let's see. So this is a
4 sublease agreement for Southwest Tax for the location --
5 let's see. Are you familiar with this agreement?

6 A. I am.

7 Q. Can you tell us what this agreement is?

8 A. This is the lease for the space as noted in
9 Paragraph 2 on Page 1, 475 Coors Boulevard Northeast,
10 Suite D in Albuquerque, New Mexico.

11 Q. And this is now a Freedom Tax location. Are
12 you also a guarantor of this lease with Freedom Tax?
13 Actually let me take that back. I apologize. Is this
14 lease still current between -- for Southwest Tax Stores?

15 A. Could you clarify as to the time period
16 you're talking about.

17 Q. For 2011.

18 A. It expired April 30th of 2011.

19 Q. April 30th of 2011. Do you assign this
20 lease to Freedom Tax?

21 A. I did not.

22 Q. Have you renewed this agreement?

23 A. I have not.

24 Q. When is the last time you paid rent on this
25 location? When is the last time Southwest Tax paid rent

1 A. I'll do my best. One was located on Eubank
2 Boulevard I believe at 1449-A. One was located on San
3 Mateo Boulevard at 3118. One was located on Golf Course
4 Road in Rio Rancho, I believe 1009.

5 Q. Okay.

6 A. One was located on Coors Boulevard at 475,
7 Suite D. One was located in Los Lunas on Main Street.

8 Q. Okay.

9 A. And I do not recall the address, one was
10 located in Belen.

11 Q. That was your satellite office?

12 A. That was the satellite office to the Los
13 Lunas store.

14 Q. Okay.

15 A. That was also on Main Street. I cannot -- I
16 can't recall with specificity.

17 Q. Do you recall the phone number for the
18 Liberty office at 1449-A Eubank Boulevard?

19 A. Yes.

20 Q. What was the phone number for that location?

21 A. One of the phone numbers was 292-1924.

22 Q. And what were the other -- what were the
23 other phone numbers?

24 A. I don't recall.

25 Q. Okay. Do you know how Freedom Tax obtained

1 possession of that telephone number?

2 A. That telephone number was transferred to
3 Freedom Tax.

4 Q. And how was that -- how was it transferred
5 to Freedom Tax? What was the process?

6 A. Contacting the Qwest representative and
7 changing the customer name on the account.

8 Q. And who contacted Qwest to change the
9 customer name on the account?

10 A. I do not recall.

11 Q. Do you know who would recall?

12 A. I do not. Either Kim Gutierrez or myself.

13 Q. And do you recall when Qwest was contacted
14 to transfer that phone number?

15 A. I do not.

16 Q. Do you have an estimation of a timeframe?

17 A. Not with any specificity.

18 Q. Would it have been in 2010?

19 A. Sometime in 2009 or 2010.

20 Q. In 2009 or 2010. Why would you -- why would
21 the phone number have been transferred in 2009?

22 A. Without knowing that it was, that was one of
23 the items that was discussed as being done when we
24 originally attempted the transaction in 2009. That's why
25 I don't recall whether that was actually done in 2009 or

1 2010.

2 Q. Okay. Do you recall the phone number for
3 your Liberty office location at 3118 San Mateo Boulevard?

4 A. Yes.

5 Q. What was that phone number?

6 A. Area code 505-883-5678.

7 Q. And do you know how Freedom Tax was able to
8 acquire that phone number?

9 A. By contacting Qwest and shifting the
10 customer responsibility for the account; same process as
11 the last one.

12 Q. Would that have been done at around the same
13 time as you transferred the other phone number?

14 A. Yes.

15 Q. Okay. Do you recall the phone number for
16 your location at 1009 Golf Course Road, Suite 104?

17 A. Yes.

18 Q. And what was that phone number?

19 A. Area code 505-891-0772 I believe.

20 Q. And how did Freedom Tax acquire that phone
21 number?

22 A. Same process of contacting the Qwest
23 customer account rep and switching the name of the
24 responsible party from Southwest Tax to Freedom Tax.

25 Q. And you have testified that you have no

1 personal recollection of contacting Qwest?

2 A. I don't recall if I did it or if Kim did it.

3 Q. And you had given Kim authority to transfer
4 the phone number?

5 A. Yes.

6 Q. What had a location at 475 Coors Boulevard
7 Northwest, Suite D. Do you recall the phone number for
8 that location?

9 A. I believe so.

10 Q. Can you tell us what that phone number is,
11 please.

12 A. I believe it was 505-243 or 234-1639.

13 Q. Were there any other phone numbers for that
14 location?

15 A. Each store had additional phone numbers.

16 Q. You can't recall what those phone numbers
17 are?

18 A. I don't recall those numbers.

19 Q. What about the Los Lunas location?

20 A. I believe -- would you restate the question.

21 Q. Can you tell me the phone number for the
22 Liberty office in Los Lunas.

23 A. Thank you. 505- I believe it was 565-8282,
24 I believe.

25 Q. Okay. And what about the Belen location?

1 Do you recall the phone number for the Liberty office in
2 the Belen location?

3 A. I do not recall that phone number.

4 Q. Okay. Do you recall a phone number
5 505-268-0099?

6 A. No, I do not.

7 Q. That was not a phone number used in the
8 Liberty office?

9 A. No, that was not.

10 Q. How about 505-352-5405? Was that a phone
11 number used in a Liberty location?

12 A. Say that phone number one more time.

13 Q. It's 505-352-5405.

14 A. I believe that was one of the back line
15 numbers, the fax numbers. Back line number was used as a
16 fax number.

17 Q. Okay. How would Freedom Tax have gotten
18 possession of that phone number?

19 A. Same process as before, contacting the
20 customer account rep and transferring the number over.

21 Q. Did you have a personal account rep for your
22 Qwest phone numbers?

23 A. There were about six of them.

24 Q. Okay. I'm just going to take this back.

25 MR. GAYNOR: Just to be clear, you're not

1 A. I have not.

2 Q. Have you seen a similar document? Have you
3 seen a document that was substantially the same except at
4 the top it would have said Liberty Tax Client Data Sheet?

5 A. It looks very similar to a document we used
6 as Liberty Tax.

7 Q. And do you know who created this form?

8 A. I do not.

9 Q. Do you know what -- did you have forms like
10 this in your Liberty Tax offices?

11 A. I did not have these forms. As I said, we
12 had forms similar to this when I had the stores as
13 Liberty Tax Stores.

14 Q. Okay. Do you know what happened to the
15 forms that you had in your store?

16 A. Hopefully they were used with clients that
17 came in.

18 Q. When you sold your store did you have extra
19 forms in your offices?

20 A. Any -- yes.

21 Q. And do you know what became of those forms?

22 A. Forms that had Liberty's logo on them were
23 run through a shredder machine.

24 Q. Did you have any of those forms
25 electronically where you could just pull them up and

1 what the line items would have been.

2 Q. Okay. And then so but for this product
3 paper filing, what is it -- the way that this information
4 is presented for paper filing, electronic filing,
5 electronic refund check, and refund anticipation loan.
6 Is that substantially similar to the form you used at
7 your Liberty office?

8 A. It appears to be without the basis of the
9 information, the wording I'm not certain is substantially
10 the same or not but the intent --

11 Q. Okay.

12 A. -- appears to be consistent with what we
13 used at Liberty Tax.

14 Q. And why don't you go ahead and flip it over.
15 On the back side is a Tax Year Filing Status Flow Chart.
16 Are you familiar with this form?

17 A. To the best of my knowledge this looks like
18 the flow chart that we used at Liberty Tax.

19 Q. Okay. Thank you.

20 MS. SHELDON: I'm going to move to admit
21 Exhibit 14.

22 MR. GAYNOR: Same objection; lack of
23 foundation for all the reasons previously stated for the
24 past three or four exhibits.

25 Q. (BY MS. SHELDON) Okay. I'm going to show

1 long. Maybe a half hour.

2 MR. GAYNOR: This is your show.

3 MS. SHELDON: We can do --

4 MR. GAYNOR: How are you?

5 THE WITNESS: I'm not parched yet.

6 MR. GAYNOR: Okay. Good.

7 (Marked Clark Exhibit No. 16A.)

8 Q. (BY MS. SHELDON) I'm going to show you --
9 this part of the discovery that you produced to us. They
10 are Bates stamped Clark 0071 through Clark 00100. And it
11 looks like these are release -- well, the form is Release
12 of Information and then it's "I," and it would be have
13 the person's name. This particular one 0071 is Gregory
14 Lucero, "hereby authorize Southwest Tax Stores doing
15 business as Liberty Tax Service, LLC to release a copy of
16 my federal and state income tax returns for the following
17 years to Freedom Tax." And then it has them sign, give
18 their Social Security number, the office that the
19 location was prepared. Then they sign and date it. I'm
20 just going to hand those to you. Now, just generally can
21 you explain to me how that Release of Information worked?

22 A. Would you clarify the question.

23 Q. Well, let's start with who drafted this
24 form, who drafted the Release of Information?

25 A. I did.

1 Q. And why did you draft that?

2 A. As having run Liberty Tax stores Southwest
3 Tax had clients who would need access to their tax
4 returns for various reasons; due to loans, mortgages, et
5 cetera. Many here need them for applying for jobs with
6 the National Labs that are here located in town. So as
7 to not leave my customers empty-handed I directed -- or I
8 constructed this release so that they could receive a
9 copy of their tax return. Not their information that
10 they brought but the actual return itself if they did not
11 retain their own copy.

12 Q. Okay. And then who did you give these
13 releases to? Like after you drafted it what did you do
14 with it after you drafted it?

15 A. I gave a blank copy of the release of
16 information to Ms. Gutierrez.

17 Q. And did you give her instructions on how to
18 use that release?

19 A. Yes.

20 Q. And what were your instructions to her?

21 A. The instructions I gave if I had -- if one
22 of my customers came to her store needing a copy of the
23 returns since I had taken all of the processing computers
24 which had their -- the copies of their tax returns
25 available on them, that if they were in need of a copy of

1 that tax return and they filled out this form, that she
2 would then have her office fax this form up to me or
3 deliver this form to me. And once I received a copy of
4 this form I would then take the computer for the relative
5 office, set it up, hook it up to the printer, print a
6 copy of the tax return and return that tax return back to
7 her.

8 Q. And did you give -- you gave a blank copy to
9 Kim Gutierrez. Did you give a blank copy to anybody
10 else?

11 A. Not to my knowledge she was to disseminate
12 them throughout her stores.

13 Q. Did you ever give this release to any
14 Liberty Tax stores?

15 A. No.

16 Q. Okay. Are there any other releases of
17 information that you did not produce as part of your
18 discovery?

19 A. As far as customers ones that are filled
20 out?

21 Q. Uh-huh.

22 A. No. I gave you a complete set of ones I
23 received to the best of my knowledge.

24 Q. Did you ever provide customer tax
25 information to somebody without a release of information

1 the left side of the picture?

2 A. Yes.

3 Q. And can you tell me what that is.

4 A. That is a costume replica of the Statue of
5 Liberty.

6 Q. And where did you obtain -- is that a
7 costume that Southwest Tax owned?

8 A. It appears to be a costume that Southwest
9 Tax owned.

10 Q. And where would you obtain -- where would
11 Southwest Tax have obtained that costume?

12 A. I don't recall the specific vendor. One of
13 the Liberty Tax vendors.

14 Q. Are you able to recognize that employee?

15 A. No.

16 Q. Okay. And is this a costume that would have
17 been left at your Southwest Tax stores --

18 A. Yes.

19 Q. -- when you sold them?

20 A. Yes.

21 Q. Did you feel any reason to remove the
22 costumes from the Southwest Tax tax offices?

23 A. No.

24 Q. Were they a part of the sale between you and
25 Freedom Tax?

1 A. They were assets that were left in the
2 building.

3 Q. Okay. I'm going to move to admit
4 Exhibit 26.

5 MR. GAYNOR: Same objections.
6 (Marked Clark Exhibit No. 27.)

7 Q. (BY MS. SHELDON) This is Clark Exhibit 27.
8 This is a photograph. Are you able to identify the
9 location of this photograph?

10 A. Yes.

11 Q. And what's the location?

12 A. This appears to be the San Mateo location
13 that Southwest Tax Stores operated at 3118 San Mateo
14 Boulevard.

15 Q. And are you able -- if you look to the door
16 there you can see, it kind of looks to me like the Statue
17 of Liberty, like a Statue of Liberty costume. Are you
18 able to -- do you recognize --

19 MR. GAYNOR: I'm going to object to the
20 vagueness of that question. I don't understand what's
21 being asked.

22 Q. (BY MS. SHELDON) Are you able to -- are you
23 able to identify the item that you can see right through
24 the door? It's blue and yellow.

25 A. It appears to be a Statue of Liberty mascot

1
2 THE STATE OF NEW MEXICO :
COUNTY OF BERNALILLO :

3
4 BE IT KNOWN that the foregoing transcript of
proceedings was taken by me; that I was then and there a
5 Certified Court Reporter and Notary Public in and for the
County of Bernalillo, State of New Mexico, and by virtue
6 thereof, authorized to administer an oath; that the
witness before testifying was duly sworn by me; that the
7 foregoing 105 pages contain a true and accurate
transcript of the proceedings, all to the best of my
skill and ability.

8
9 BE IT FURTHER KNOWN that examination of this
transcript and signature of the witness was requested by
the witness and all parties present. On
10 _____, a letter was mailed or
delivered to Mr. Todd M. Gaynor regarding obtaining
11 signature of the witness.

12 I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted by
13 the Rules) any of the parties or attorneys in this case,
and that I have no interest whatsoever in the final
14 disposition of this case in any court.

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16
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18 _____
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